

**COMPLAINT INVESTIGATION SUMMARY**

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| COMPLAINT NUMBER:            | 2125.04           |
| COMPLAINT INVESTIGATOR:      | Jennifer Campbell |
| DATE OF COMPLAINT:           | May 7, 2004       |
| DATE OF REPORT:              | June 4, 2004      |
| REQUEST FOR RECONSIDERATION: | n/a               |
| DATE OF CLOSURE:             | July 8, 2004      |

**COMPLAINT ISSUES:**

Whether the School Town of Munster and the West Lake Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to implement the student's behavioral intervention plan (BIP).

**FINDINGS OF FACT:**

1. The student is eleven years old, in the fifth grade, and is eligible for special education and related services as a student with autism spectrum disorder.
2. The Student's individualized education program (IEP) incorporates a behavior intervention plan (BIP) that was adopted by the CCC on April 30, 2003, for the 2003-2004 school year. The BIP was amended on October 21, 2003, reviewed on March 30, 2004, and revised on April 27, 2004. The Complainants consented to the initial, amended, and revised BIP.
3. The April 30, 2003, BIP lists six rules the Student is to follow: keep hands and feet to self; follow teacher/staff directions; stay in designated area; complete and turn in assignments; raise hand to speak; and treat others with respect. The following strategies are to be used when the Student does not follow the rules: "stoplight" and "time away." A "stoplight" is used with warnings—when the Student breaks a rule, the staff/teacher will state the rule that was broken then "cover the light" with the "written rule" of correct behavior. Two warnings are given to the Student before the red light is covered. When the red light is covered, the Student will spend fifteen minutes in the designated time out room and then return to class. "Time away" is a designated area in the classroom for the Student to go to when angry or frustrated. A visual timer is to be used during the time away. After the five-minute time away, the Student is expected to return to the activity or to the Student's desk. Lastly, a time out, which is different from a time away, is given when the following occurs: the Student reaches the red level of the stop light procedure; the Student refuses to go back to desk after a "time away"; or the Student's behavior is "out of control." Time outs are fifteen minutes in length and held in the special education room. The BIP lists the following procedures to follow when the Student is noncompliant: 1) redirect the Student by "voicing the specific expectation" of compliance; 2) ask the Student to stop and state the rule the Student's behavior is breaking, offer the Student a time away break, and give the Student a minute to respond; and 3) if the Student continues to be noncompliant give the Student a time out.
4. The Complainants first allege that the School removed the Student from the Student's tribe. On February 9, 2004, the Student was kicking the other members of the tribe, so the School moved the Student's desk two to three feet away from the tribe. The classroom is arranged by groups of six—six students' desks are

pushed together to form a tribe and the students help each other during group activities. The School documented in the "Communication Journal," (a notebook used by the staff/teachers to notify the Complainants in writing when teachers will be absent or of any major changes in the Student's day) on February 9, 2004, that the Student's "constant disruptions, aggression, and demands for attention interfered with the other children's ability to learn" caused the Student to be moved away from the tribe. The School also documented in the journal on March 2, 2004, that the Student continues to participate in group activities, but that the Student's desk is moved two to three feet away when the students work independently in order to reduce the Student's temptation to disturb others. No documentation exists to show whether the School implemented the BIP strategies before moving the Student's desk; however, the BIP does not expressly prohibit the teacher from moving the Student's desk.

5. On March 30, 2004, a CCC meeting was held and the CCC agreed to place the Student's desk back in the tribe and to move the Student to a table or to the resource room when the Student needs to work independently. The April 27, 2004, revised BIP indicates that when the Student is disruptive or physically aggressive, the Student will be placed in another area of the general education classroom, or be placed in the resource room until calm.

## **CONCLUSION**

Findings of Fact #2 to #5 indicate no documentation exists to show whether or not the School implemented the IEP, specifically, the BIP strategies before removing the Student's desk from the tribe. Therefore, a violation of IAC 511 7-27-7(a) is found. However, the behavior intervention plan does not prohibit the teacher from moving the Student's desk. Furthermore, the CCC resolved the change in desk placement at the March 30, 2004, CCC meeting. The CCC revised the BIP on April 27, 2004, and incorporated into the BIP a crisis management for when the Student is physically aggressive—the Student will be moved away from students and sent to the resource room until calm. Findings of Fact #2 and #5 show that the School has taken the appropriate corrective action; therefore, the Division of Exceptional Learners requires no corrective action.

**The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.**